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FM AMEMBASSY MEXICO
TO RUEHC/SECSTATE WASHDC PRIORITY 5401
INFO RUEHXC/ALL US CONSULATES IN MEXICO COLLECTIVE PRIORITY
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC
RHMFIUU/HQ USNORTHCOM
RHMFISS/CDR USSOUTHCOM MIAMI FL
RHEHAAA/NSC WASHINGTON DC

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SENSITIVE, SIPDIS

STATE FOR EB/TPP/MTA/IPE/KEAT/URBAN
STATE FOR WHA/MEX/WOLFSON
STATE PASS TO USTR FOR MELLE/MCCOY/SHIGETOMI/VETERE/CHOE-
GROVES
STATE PASS TO JUSTICE FOR CCIPS/MERRIAM,KOUAME AND
OPDAT/TRUEBELL AND RAMOS
STATE PASS TO COMMERCE FOR ITA/MAC/ONAFITA/WORD
STATE PASS TO COMMERCE FOR ITA/MAC/IPR/WILSON
COMMERCE PASS TO USPTO FOR RODRIGUEZ/BERDUT/MORALES

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [MX](#)

SUBJECT: MISSION INPUT ON 2009 SPECIAL 301 REVIEW - MEXICO

REF: SECSTATE 8410

11. (SBU) Summary: The US Embassy recommends that Mexico remain on the Special 301 Watch List for 2009. The Mexican government continues to make significant advances in areas of concern highlighted in last year's report, but this is offset by little or no progress on others. The Calderon administration has escalated its cooperation and actions within the interagency, with the US Embassy, and with the industry, but it is fighting a desperate battle against widespread commercial piracy and counterfeiting, with ties to organized crime, that plagues the Mexican market. The inclusion of Mexico on the Watch List would clearly demonstrate the gravity of the situation. At the same time, not elevating Mexico to the Priority Watch List would recognize the sustained efforts that Mexico is making to better protect and enforce intellectual property rights (IPR). The US Embassy and constituent posts will continue to monitor, encourage, and assist Mexican efforts to strengthen enforcement and safeguard the interests of right-holders. We expect our robust cooperation with Mexico on IPR issues in the regional and multilateral arenas will continue, and see this cooperation as a positive influence on domestic IPR protection and enforcement efforts. End summary.

Overall Assessment of IPR Climate

12. (SBU) Mexico continues to suffer from widespread and largely undeterred commercial IPR infringement that causes huge losses to Mexican, U.S., and third country IP right-holders. This past year, the federal government and a small number of states have ramped up their IPR protection and enforcement efforts and intra-governmental coordination. Cooperation between government agencies and with the industry has greatly improved, but links to organized crime, legislative loopholes, a cumbersome judiciary process, and a widespread cultural acceptance of illegal commerce continue to hinder effective deterrence of piracy and counterfeiting.

13. (U) Mexico continues to play a positive role in the international community. In the last year, Mexico:
-- Was the first Latin American country to host the APEC Life Sciences Innovation Forum on Anti-Counterfeiting Medical

Products;

- Was the first developing country to join the Anti-Counterfeiting Trade Agreement
- Was a key partner in the Heilingedamm Process dialogue on the promotion and protection of IP and innovation in the runup to the 2009 G8 Italian Summit, and;
- Actively supported the IPR Working Group under the trilateral Security and Prosperity Partnership of North America (SPP). At their April 2008 meeting in New Orleans, President Bush and the leaders of Mexico and Canada renewed their commitment to protect inventors, innovators, and right-holders by advancing the Intellectual Property Action Strategy. The strategy has three broad categories of activity: detection and deterrence; public education and outreach; and measuring piracy. The three governments are jointly pursuing specific action items under all three of these broad categories.

Scorecard on Areas of Concern from 2008

14. (SBU) In last year's report, a number of areas were identified where Mexico was encouraged to take action. Here is a synopsis of Mexico's 2008 performance in these areas:

- Mexico continues to build its record of aggressive prosecutions and deterrent-level penalties. The number of raids, arrests, indictments, and convictions rose yet again in 2008. The Prosecutor General of the Republic (PGR - rough equivalent of the Department of Justice) conducted 4,912 raids in 2008, confiscating 152.4 million pirated or counterfeit

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articles. The specialized IP Unit in PGR served 163 criminal indictments. 12 individuals were convicted of IP violations in Mexico's penal system, significantly up from 5 in 2007 and 2 in 2006. Penalties include some of the largest prison sentences imposed in Latin America - two for four years in prison and one for six and 1/2 years in prison as well as \$40,000 in fines (see para 5E below). To assist PGR in its enforcement efforts, curb potential corruption and speed up the process, PGR can now obtain a search warrant electronically. The process from submitting the documentation and evidence to the issuing of the warrant takes less than 12 hours and the judges remain unknown to the parties; therefore they are less exposed to external influence.

- Although the State of Mexico and the Municipality of Toluca signed agreements with Mexico's federal government and right-holders to cooperate in combating piracy and promoting legitimate commerce in 2007, similar cooperation efforts between federal, state, and local authorities were not forthcoming in 2008. Nevertheless, exploratory dialogue continues with the States of Morelos and Puebla. The government of Mexico City has also not signed such an agreement, but continues to work closely with federal law enforcement officials in attacking all forms of illegal commerce in the city center.

- The Mexican customs authority launched an anti-piracy initiative in 2008, and has increased its cooperation and its efforts to deter IP violations. Customs enforcement efforts almost doubled, growing from 66 seizures the previous year to 115 in 2008. 11.9 tons, or 36.4 million counterfeit and pirated goods, were seized by the Mexican customs authority in 2008 Q up from 10.4 tons in 2007. To more effectively detect, detain, and deter the importation of pirated and counterfeit goods, the customs authority increased the number of training programs to 14 in 2008, three of which were in cooperation with the US Embassy and the Department of Justice (Manzanillo in April, Mazatlan in August, and Pantaco in Mexico City in November). One out of 10 Mexican customs officials have now participated in USG-sponsored training programs. These programs have emphasized the development of essential customs techniques and practices, the importance of interagency cooperation, and the value of collaboration with the private

sector. Customs is also implementing a system to measure piracy detection and deterrence at all ports of entry. The development of a trademark database, which will help officials to contact right holders, is still in its early stages, but a pilot program is expected in 2009.

-- A bill to grant ex officio powers to law enforcement officials to pursue IPR crimes was passed by acclamation in the Chamber of Deputies in April 2008. It continues to languish in the Senate, where despite enjoying strong support, due to some individual discord it cannot be wrested from the Finance Committee for a full floor vote. We continue to lobby on behalf of this legislation.

-- Camcording is a major concern in Mexico. The MPAA identified 32 major film releases that were illegally recorded in Mexico's movie theaters in 2008. Legislation calling for the criminalization of theatrical camcording was introduced into the Mexican Congress several years ago, but has gone nowhere. PGR, in cooperation with representatives of the motion picture industry, has worked within the current confines of the law to arrest six individuals and dismantle one of Mexico's four major camcording distributors. These cooperative criminal enforcement efforts are ongoing. IMPI also worked with the motion picture industry on an anti-camcording campaign, including signs distributed to all theaters throughout Mexico warning that camcording is a crime.

-- The publication of the annexes of the WIPO Internet Treaty in the Mexican national register, initially promised by the end of 2008, has been delayed. INDAUTOR (the Mexican copyright office) reports they will be published early 2009.

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With this, the GOM will assure the general and international public that Mexico understands and respects the internationally-accepted interpretation of the treaty.

-- The rules that either define or mandate data protection are still absent from Mexican law and relevant health regulations. However, Mexican officials appear to have shifted from their previous position that NAFTA 1711 (Trade Secrets) is self-executing, and now see a need for further legislative or regulatory action to protect against unfair commercial use for test or other data generated to obtain marketing approval for pharmaceutical products. Mexican health, trade, and IPR officials have convened an interagency commission to draw up the data exclusivity regulations for Mexico. The US Embassy, working with the research-and-development pharmaceutical industry and colleagues from the European Commission's Mission in Mexico, will continue to encourage the development of clear, NAFTA-consistent data protection rules in a transparent manner.

-- As mentioned in para 3 above, Mexico recently hosted the APEC Life Sciences Innovation Forum on Anti-Counterfeiting Medical Products. Mexican officials have stated that only 0.5 percent of the pharmaceuticals in Mexico have been determined to be counterfeit, a figure which appears to be unrealistically low. However, they are interested in expanding the scope of their investigation to measure in more exact terms the problem of counterfeit pharmaceuticals in Mexico.

Other Specific Areas of Concern

15. (SBU) This section addresses the specific areas of concern as listed in reftel:

1A. TRIPS Implementation, NAFTA Implementation and Other IP-Related Issues: As reported last year, Mexican law is largely in compliance with TRIPS and NAFTA obligations, with data protection (see above) standing out as a possible exception. With regard to implementation of its own laws, one could argue that the application of deterrent penalties as required under

TRIPS Article 61 and NAFTA 1717 are the exception rather than the rule.

1B. Data Protection: Some minimal steps have been taken by the Mexican government to protect test and other data submitted by pharmaceutical companies (see above). In line with the Calderon Administration's efforts to promote effective competitiveness, investment, and innovation, Mexican health, trade, and IPR officials acknowledge there must be a clear set of rules that ensure data protection. With the opening of an FDA office in Mexico City this year, the US Embassy looks forward to engaging the Mexican government on this issue.

1C. Enforcement: As stated above, the number of raids, seizures of counterfeit or pirated goods, arrests, indictments and convictions of pirates and counterfeiters has risen. The desire to work collaboratively with the USG has also dramatically increased as well. Last year, DHS/ICE conducted its first-ever joint operation with PGR and Customs involving a controlled delivery of counterfeit cellular phone merchandise from Hong Kong, through Anchorage, Alaska, to Guadalajara, Mexico. Two individuals were arrested for violations of Mexican Customs laws. The special IPR unit in the PGR has improved its intelligence targeting of pirating networks; however, it still has not made use of organized crime authorities to seek stiffer penalties on commercial infringers. IMPI (Mexico's Patent and Trademark Office) has stepped up its administrative enforcement actions, but remains hampered by low maximum fines it can impose and a legal process that allows infringers to file repeated injunctions that stave off penalties for months or even years. In an effort to expedite the judicial process, in December the GOM established a specialized IPR Court of three judges to handle

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all IP-related civil cases throughout Mexico.

1D. Notorious Markets: Informal markets throughout Mexico feature vendors blatantly selling pirated audio-visual materials and counterfeit name-brand goods. In Mexico City, Tepito remains the main warehousing and distribution center for infringing products, and hosts scores of retail stalls. Other markets of particularly ill repute include the Plaza Meave, the Eje Central, Lomas Verdes, and the Pericoapa Bazaar in Mexico City, San Juan de Dios in Guadalajara, Simitrio-La Cuchilla in Puebla, and the Pulgas of Monterrey. Authorities do conduct raids in these markets, but usually at night to avoid violent confrontations that daylight raids can provoke. In November, a daylight raid of roughly 150 PGR and police officers on San Juan de Dios was met by almost 300 armed miscreants, and forced the enforcement officials to abandon the raid and flee the area. A tactic that has proven effective is for other enforcement agencies (IMPI, COFEPRIS, and the tax administration) to accompany PGR on these raids, as they can add charges of IPR infringement, safety violations, or tax evasion to the criminal charges brought by PGR. PGR has launched a pilot program in Pericoapa to assist stall owners in making the shift to selling name-brand goods rather than counterfeit products.

1E. Internet Piracy: PGR's specialized IPR unit secured the conviction of one man who sold infringing movies, music, and TV series via the Internet, for which he was sentenced to 6 1/2 years and made to pay a fine of almost \$40,000. PGR has requested training from Department of Justice cyber-crime experts to refine its ability to detect and prosecute this kind of piracy. IMPI made over 80 inspection visits per month in 2008 to cyber-cafes suspected of abetting Internet piracy in conjunction with the Mexican music industry to warn owners of potential legal liability and to provide mechanisms for blocking access to problem sites. The Mexican government has also launched a working group with the ISP community to develop a policy to encourage respect by users for copyrighted work and to punish repeat copyright infringers.

1F. Production, Import and Export of Counterfeit Goods: Customs

officials can hold suspect shipments for a very limited time (usually 48 hours) on their own authority, although there is a bill currently under congressional consideration that would expand this time to five days. After that, customs must receive an order from either PGR or IMPI to seize the merchandise in question. PGR and IMPI, in turn, would need to obtain a formal complaint from the aggrieved right-holder before issuing such an order. USG training programs for Mexican customs officials (see above) have led to better coordination among Mexican customs, PGR, IMPI, and right-holders, though greater latitude for customs to act on its own authority would be helpful.

1G. Optical Media Piracy: Piracy of movies, music, video games and business software is rampant in Mexico. According to the International Intellectual Property Alliance (IIPA), U.S. copyright industries (not including the film industry) suffered losses to piracy of more than \$900 million in 2008, down from the \$1.3 billion reported loss in 2007. MPAA estimates that its member companies lost \$800 million last year in Mexico, almost double the estimated \$480 million lost in 2007. An estimated 9 out of every 10 movies sold in Mexico are pirated. Mexico continues to import hundreds of millions of blank optical media units in excess of its legitimate demand. However, Mexican authorities have increased their efforts in this area. In late 2008, PGR arrested the main importer of optical discs to Mexico on charges of contraband, tax evasion and fraud, and forging of documents. PGR also dismantled 253 audio-visual recording labs last year, and seized almost 9,000 computers and other reproduction equipment, 15.6 million DVDs, 27.5 million CDs, and an incalculable number of blank optical discs. Also in late 2008, the US enforcement officials apprehended a man in San Antonio, Texas who was the main distributor of optical media

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units in the notorious Tepito market. The price of blank media disks in the pirate markets of Mexico is now double what it was in 2007.

1H. Use/Procurement of Government Software: The federal government generally purchases and uses legitimate software. The Business Software Alliance (BSA), IMPI, and the government of the State of Jalisco launched an initiative in 2007 to "Clean House" by ensuring that all software used in state government offices was licensed. Similar initiatives in other state and city governments are still in development. The BSA, CEMPRO (the Mexican book editors association) and IMPI are also negotiating an agreement between them and Mexico's public universities to protect right-holders from the unauthorized reproduction of their materials.

1I. Treaties: Mexico's National Copyright Institute (INDAUTOR) is conducting a review of whether Mexican law is in compliance with the WIPO Internet Treaties it has ratified. INDAUTOR has not set a timeline for completion of its review.

Training -----

16. (U) A final note Q The US Embassy and the USG has had considerable success in collaborating with our Mexican counterparts to conduct several training and exchange programs. In addition to the three DOJ-sponsored customs training events mentioned above, the US Embassy and USPTO sponsored a training program in October for 150 IMPI officials in civil and criminal enforcement. DHS/CBP and ICE have actively participated in these programs. Two IMPI officials participated in the APEC-IPEG supply-chain integrity workshop in Hong Kong, also sponsored by USPTO. In Cancun in February 2008, Mexican judges, prosecutors, right-holders, and IPR officials convened an international conference for judges from around the world covering the whole range of legal issues related to copyrights, trademarks, patents and data protection, and enforcement. Two U.S. federal district court judges and experts from the U.S. Copyright Office, USPTO, and

the Department of Commerce participated. Preparations are underway to build from this success with an even larger second annual conference in Monterrey in March 2009. Five Mexican federal judges (both administrative and penal), seven PGR public prosecutors, 11 IMPI and one INDAUTOR official participated in USPTO's Global IP Academy training courses in 2008. This has not only deepened Mexico's understanding of the importance of IPR protection and enforcement, but has also created an unprecedented dialogue with enforcement officials, judges, and right-holders in Mexico that is identifying the key obstacles to countering IP violations and is helping to build political pressure to eliminate them. Post appreciates the past and continued support by the USG interagency for these training programs.

BASSETT